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(Defendants is exempt from filing fees pursuant to Government Code § 6103)

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JOSHUA ASSIFF,

Plaintiffs,

v.

COUNTY OF LOS ANGELES;
SHERIFF DEPUTY BADGE
NUMBER 404532; And DOES 1
through 10,

Defendants.

Case No.: 2:22-cv-05367 RGK(MAAx)

**DEFENDANTS' REPLY IN SUPPORT
MOTION FOR PARTIAL SUMMARY
JUDGMENT**

Date: June 26, 2023

Time: 9:00 a.m.

Crtrm: 850

Action Filed: August 3, 2022

Pretrial Conference: July 10, 2023

Trial Date: July 25, 2023

Assigned to:

Hon. R. Gary Klausner, District Judge
Courtroom 850

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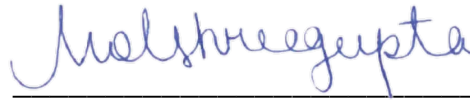
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1 COME NOW Defendants COUNTY OF LOS ANGELES and SERGEANT
2 TRAVIS KELLY, and hereby submit the following memorandum of points and
3 authorities in reply to Plaintiff's Opposition to Defendants' motion for summary partial
4 summary judgment.

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7 Dated: June 12, 2023

KJAR, MCKENNA & STOCKALPER, LLP

8
9 By:



PATRICK E. STOCKALPER

MOLSHREE GUPTA

Attorneys for Defendants,

COUNTY OF LOS ANGELES and DEPUTY
TRAVIS KELLY

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PENAL CODE SECTION 695, 7, 9
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Joshua Assiff's ("Plaintiff") Opposition to Defendants SERGEANT TRAVIS KELLY ("Defendant Kelly") and COUNTY OF LOS ANGELES' ("Defendant County") Motion for Partial Summary Judgment fails to demonstrate any material issues of fact as to his claims for unlawful arrest and punitive damages against Defendant Kelly, and municipal liability against Defendant County.

Unlawful arrest: Plaintiff argues, based solely on his allegations and deposition testimony, that "he was unlawfully arrested ... [because t]here was no probable cause for the traffic stop in the first place..." (Opposition, Dckt. #53-2, at p. 15, ls. 14-24.) However, as has been clarified repeatedly throughout the course of this litigation, Plaintiff was not arrested for a traffic violation; rather, he was arrested for violation of California *Penal Code* sections 69 (resisting an officer) and 243(b) (battery against the person of an officer). As such, his subjective belief about the legality of the traffic stop is irrelevant and immaterial to the Court's inquiry on this claim, i.e. whether a reasonable law enforcement officer in Defendant Kelly's position believed there was probable cause to arrest Plaintiff under *Penal Code* sections 69 (resisting an officer) and 243(b) (battery against the person of an officer).

As discussed below, Plaintiff's arguments in support of this claim for unlawful arrest is based upon improper speculation by Plaintiff as to Defendant Kelly's motive in initiating the traffic stop and further speculation as to his purportedly retaliatory conduct, as well as blatant misrepresentations by his counsel as to Defendant Kelly's purported racial animus, all of which are belied by Plaintiff's concession in deposition that Defendant Kelly had not seen his skin color or hair when he first initiated the traffic stop and that Plaintiff believed Defendant Kelly initiated the traffic stop because he believed there was a traffic violation, as well as the objective evidence which shows Plaintiff's noncompliance with Defendant Kelly's verbal orders, and continued physical resistance despite multiple warnings.

1 As such, Plaintiff cannot establish his claim for unlawful arrest.

2 ***Punitive Damages:*** Plaintiff's Opposition concedes that Defendant Kelly's
3 conduct during the subject incident is, at worst, below the standard of generally accepted
4 police practice. As such, Plaintiff cannot show Defendant Kelly's malice, oppression or
5 intentional disregard required to maintain his punitive damages claim.

6 ***Municipal Liability:*** Plaintiff concedes that the "LASD has a very comprehensive
7 Use of Force manual that gives thorough and specific details on the use of force and the
8 reporting of such use of force." [See Fact No. 59; Plaintiff did not dispute this fact.]
9 Despite this concession, Plaintiff relies on unrelated findings of an investigation, which
10 he admits did not involve the region of Los Angeles County where this incident occurred
11 or the LASD station(s) which were the subject of the irrelevant investigation, to assert
12 liability in this case against Defendant County. This is improper evidence of a
13 constitutional violation in this action.

14 Moreover, even after investigating Defendant Kelly's personnel history, Plaintiff
15 is unable to identify a single instance where Defendant Kelly's prior conduct which fits
16 Plaintiff's theory of liability in this case. In other words, nothing in Defendant Kelly's
17 personnel file indicates a history of racial profiling, discriminatory traffic stops, unlawful
18 arrests or unreasonable uses of force. To overcome this substantial hurdle, Plaintiff
19 stitched together a self-serving and defamatory summary of hearsay statements
20 contained in Defendant Kelly's personnel records, and attempted to bolster it with
21 factual misrepresentation from Thomas Ferlauto, Esq. regarding the deposition testimony
22 of Defendant Kelly.

23 Plaintiff has not produced competent, admissible evidence to demonstrate that his
24 alleged constitutional injury was caused by an expressly adopted official policy or a
25 longstanding practice or custom of LASD. Therefore, Plaintiff cannot maintain his
26 claim for *Monell* liability.

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1 **II. STATEMENT OF LAW**

2 **A. No Reasonable Juror Court Find That Defendant Kelly Lacked**
3 **Probable Cause to Arrest Plaintiff for Resisting And/Or Battering A**
4 **Law Enforcement Officer**

5 **1. Plaintiff's Arguments Do Not Establish Lack of Probable Cause For**
6 **the Subject Arrest**

7 As put forth in the instant motion, the indisputable evidence demonstrates that
8 Defendant Kelly had probable cause to arrest Plaintiff for violation of California *Penal*
9 *Code* sections 69 (resisting an officer) and 243(b) (battery against the person of an
10 officer), based upon Plaintiff's failure to comply with verbal commands and warnings, as
11 well as his aggressive physical resistance to efforts by Defendant Kelly and other LASD
12 deputies to remove him from his vehicle.

13 As to Plaintiff's assertion that the traffic stop was racially motivated at the outset
14 (Opposition, Dckt. #53-2, at p. 15, l. 24), he conceded at his Deposition that Defendant
15 Kelly had not seen him (only his vehicle) when he first initiated the traffic stop.
16 Specifically, when asked whether he believed Defendant pulled him over because of the
17 color of his skin, Plaintiff responded: "I think that once he pulled me over and saw the
18 color of my skin and my hair, I think that's when it tipped the iceberg." (**Exhibit "H,"**
19 Plaintiff's Deposition at 135:12-18.) Defendants' counsel then attempted to clarify, "But
20 when he initiated the traffic stop, when he asked you to pull over, you –" and Plaintiff
21 cut off the question by responding, "He just thought I ran the red light." (**Exhibit "H,"**
22 Plaintiff's Deposition at 135:19-21.) As such, Plaintiff himself has conceded that the
23 traffic stop was not racially motivated.

24 Plaintiff's next argument that Defendant Kelly "retaliated against Plaintiff and
25 used force against him not for anything illegal that Plaintiff did, but for attempting to
26 record the encounter on his mobile phone" (Opposition, Dckt. #53-2, at p. 15, ls. 25-27)
27 is nothing short of misdirection. As Defendants' Motion for Partial Summary Judgment
28

1 establishes, and Plaintiff fails to dispute, the evidence establishes as follows: Plaintiff
2 remained argumentative with Defendant Kelly, failed to provide his driver's license
3 despite multiple requests by Defendant Kelly, remained noncompliant with Defendant
4 Kelly's lawful commands despite multiple verbal warnings as the consequence, and
5 physically resisted efforts by Defendant Kelly and other LASD deputies to remove his
6 from his vehicle.

7 At his Deposition, Plaintiff conceded that he made a conscious decision to not
8 comply with and to physically resist Defendant Kelly and other LASD deputies during
9 the incident. (**Exhibit "H,"** Plaintiff's Deposition at 124:11-125:10 (Plaintiff's
10 admission that he was consciously resisting Defendant Kelly and struggling to remain in
11 his vehicle); 126:5-16 (Plaintiff's admission that he was consciously resisting two to
12 three LASD deputies and struggling to remain in his vehicle); 137:22-138:15 (Plaintiff's
13 admission to conscious decision to resist Defendant Kelly by pulling his arm away when
14 he touched it to pull him out of the vehicle).) While Plaintiff's noncompliance and
15 aggressive resistance are evidence not only by objective evidence and Plaintiff's own
16 spontaneous admissions, any representation as to Defendant Kelly's purportedly
17 retaliatory state of mind is pure speculation by Plaintiff and his counsel.

18 Moreover, Defendants' Motion establishes that a detained motorist cannot refuse
19 to comply with verbal commands by a law enforcement officer simply because he/she
20 disagrees with the underlying violation for which he/she is being detained. Obstruction
21 of law enforcement actively, regardless of the underlying disagreement as to its validity,
22 is adequate grounds for an arrest; battery on a law enforcement officer who is engaged in
23 law enforcement actively is also grounds for an arrest. Because Plaintiff's Opposition
24 fails to show that a reasonable law enforcement officer in Defendant Kelly's position
25 would not believe there was probable cause to arrest Plaintiff, and he cannot factually
26 establish that he did not obstruct or batter Defendant Kelly or any other LASD personnel
27 during the underlying incident, his claim for unlawful arrest fails as a matter of law.

1 **2. Plaintiff's Arguments Do Not Overcome Qualified Immunity**

2 As a preliminary matter, Plaintiff's argument on qualified immunity misses the
3 mark, because it targets the excessive force claim, which is not the subject of Defendant
4 Kelly's summary adjudication request. By failing to address Defendant Kelly's
5 entitlement to qualified immunity as to the unlawful arrest claim, Plaintiff essentially
6 concedes this issue.

7 Moreover, no clearly established law would have put Defendant Kelly on notice
8 that his arrest of Plaintiff for violation of California *Penal Code* sections 69 (resisting an
9 officer) and 243(b) (battery against the person of an officer) lacked probable cause.
10 Plaintiff's Opposition does not actually contest application of qualified immunity or
11 offer any precedent regarding clearly established law at the time.

12 In other words, Plaintiff has cited no cases or legal authority which gave
13 Defendant Kelly notice that a motorist could be noncompliant to law enforcement
14 commands, engage in conduct which obstructs law enforcement activity and/or
15 otherwise physically resist a detention simply because he disagreed with the validity of a
16 traffic stop. Rather, the law is clear that the motorist's opportunity to contest the validity
17 of the traffic stop or citation would be in traffic court and a motorist may also test the
18 constitutionality of a traffic stop through a civil claim or legal action for unlawful
19 seizure¹.

20 **B. There Is No Evidence To Support Plaintiffs' Punitive Damages Claim**

21 Plaintiff argues in opposition to Defendant Kelly's motion for summary
22 adjudication of the punitive damages claim that the same is a question of fact for the
23 jury. (Opposition, Dckt. #53-2, at p. 18, l. 10). However, under the summary judgment
24 standard, this court may dismisses the prayer for punitive damages if it decides that no
25 reasonable jury could find for Plaintiff's claim.

26 Plaintiff then argues that the "evidence suggests Defendant Kelly acted without
27 probable cause and his violent use of force was excessive, objectively unreasonable and
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¹ It is notable that Plaintiff's First Amended Complaint does not state a claim for unlawful seizure.

1 inconsistent with generally accepted police practices.” (Opposition, Dckt. #53-2, at p.
2 18, ls. 11-13). In other words, Plaintiff wants this Court to allow Defendant Kelly to
3 proceed in this litigation under the threat of punitive damages based on the mere
4 suggestion that his conduct fell below generally accepted police practices, i.e. the
5 suggestion negligence.

6 As Plaintiff knows, he cannot maintain an entitlement to punitive damages unless
7 the evidence establishes that a reasonable jury could find that he acted with malice,
8 oppression, or intentional disregard of Plaintiff’s constitutional rights. Given that
9 Plaintiff has offered no evidence to counter Defendant Kelly’s declaration that he did
10 not, and that his conduct was intended to gain compliance from Plaintiff, Plaintiff cannot
11 maintain his claim for punitive damages against Defendant Kelly.

12 **C. There Is No Evidence To Support Plaintiffs’ Monell Claim**

13 **1. Plaintiff Admitted That Defendant Kelly Did Not Pull Him Over**
14 **Due To His Race**

15 Plaintiff has asserted throughout this action, and even argued in Opposition to
16 Defendants’ subject Motion, that Defendant Kelly initiated the subject traffic stop in
17 conformity with the LASD’s purported custom and policy of racial profiling and
18 discriminatory traffic stops. However, Plaintiff has already make a spontaneous
19 admission under oath that he does not believe Defendant Kelly saw the color of his skin
20 at the time he initiated the subject traffic stop. (**Exhibit “H,”** Plaintiff’s Deposition at
21 135:12-21.) He maintained this position even after he was asked to clarify. (*Id.*)
22 Rather, Plaintiff conceded that he believed Defendant Kelly initiated the traffic stop
23 because he believed Plaintiff had violated a traffic law. (*Id.*)

24 Given that Plaintiff concedes Defendant Kelly did not know his race at the time he
25 initiated the subject traffic stop, he cannot argue that Defendant Kelly acted in
26 conformity with the LASD’s purported custom and policy of racial profiling and
27 discriminatory traffic stops. Plaintiff also cannot argue that he suffered any
28 constitutional deprivation

**2. Plaintiff's Evidence Of LASD's Custom and Policy Does Not Even
Pertain To the Santa Clarita Valley or Its LASD Station**

The evidence on Defendant Motion establishes that the incident occurred in the Santa Clarita Valley, not the Antelope Valley; Defendant Kelly was assigned to work at the Santa Clarita Valley station of the LASD on the date of the incident; Defendant Kelly was never assigned by Defendant County to work at any Antelope Valley station during his over 30 years of employment. Nevertheless, Plaintiff continues to present as credible, reliable evidence unrelated, hearsay findings concerning the Antelope Valley stations.

While Plaintiff's Opposition substantively concedes that the findings do not pertain to the subject station, he vaguely argues that Santa Clarita is a "northern area of the County and just one Sheriff's Department station adjacent to but south of the actual Antelope Valley." (Opposition, Dckt. #53-2, p. 17, ls. 14-16.) None of this matters, given Plaintiff has provided no evidence to show that Defendant Kelly had a history of racial profiling or discriminatory traffic stops (see below).

3. Plaintiff's Efforts to Malign Defendant Kelly Are Ineffective

Plaintiff has provided absolutely no evidence that Defendant Kelly's personnel file reflects a history of racial profiling or discriminatory traffic stops. Rather, Plaintiff stitched together a self-serving and defamatory summary of hearsay statements contained in Defendant Kelly's personnel records, and attempted to bolster it with factual misrepresentation from Thomas Ferlauto, Esq. regarding the deposition testimony of Defendant Kelly. (See Declaration of Patrick Stockalper, filed concurrently).

As a preliminary matter, none of the personnel records submitted in support of this argument are competent, admissible evidence. (See Defendants' Objections to Plaintiff's evidence, and Defendants' Motion in Limine No. 1, filed June 9, 2023). Moreover, even if the personnel records were evidence, they fail to substantiate Plaintiff's theory of liability – that Defendant Kelly's conduct was in conformity of Defendant County's purported custom and policy of racial profiling or discriminatory

1 traffic stops. While Plaintiff may opine that Defendant Kelly is a bad motorcycle cop, he
2 has no evidence of Defendant Kelly ever participated in racial profiling or discriminatory
3 traffic stops while employed by the County.

4 Because Plaintiff cannot show that Defendant Kelly racially profiled or
5 discriminated against him, or that Defendant Kelly's personnel file reflects a history of
6 racial profiling or discriminatory traffic stops, Plaintiff cannot show that he suffered a
7 constitutional violation as a result of Defendant County's purported custom and policy of
8 racial profiling or discriminatory traffic stops.

9 **III. PLAINTIFF IS NOT ENTITLED TO ADDITIONAL TIME TO OPPOSE**
10 **THIS MOTION**

11 Plaintiff argues that for additional time to oppose this Motion on substantially the
12 same grounds as the grounds on which Plaintiff sought *ex parte* relief of a continuance of
13 the hearing on the subject Motion. On June 1, 2023, this Court denied Plaintiff's request
14 for *ex parte* relief, finding that "Plaintiff created his own emergency" by waiting until
15 the close of discovery to notice the depositions he needed to prove his claims. (Docket
16 #52, p. 1.) Given the Court's June 1, 2023, Order (Docket #52), it is inappropriate for
17 Plaintiff to seek the same relief in his Opposition, filed June 5, 2023.

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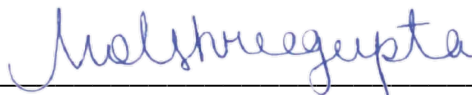
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1 **IV. CONCLUSION**

2 Based on the foregoing, the moving papers, and all pleadings (including
3 Defendants Motions in Limine Nos. 1-5, filed June 9, 2023, Defendants reiterated their
4 request for summary judgment on Plaintiff's claims for unlawful arrest and punitive
5 damages against Defendant Kelly, and municipal (*Monell*) liability against Defendant
6 County.

7 Dated: June 12, 2023

KJAR, MCKENNA & STOCKALPER, LLP

8
9 By: 

10 PATRICK E. STOCKALPER

11 MOLSHREE GUPTA

12 Attorneys for Defendants,

13 COUNTY OF LOS ANGELES and SERGEANT

14 TRAVIS KELLY
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CERTIFICATE OF SERVICE

I am employed in the County of Los Angeles, State of California; I am over the age of eighteen years and not a party to the within action; my business address is 841 Apollo Street, Suite 100, El Segundo, California 90245.

On June 12, 2023, I served the foregoing document described as **DEFENDANTS' REPLY IN SUPPORT MOTION FOR PARTIAL SUMMARY JUDGMENT** on all interested parties in this action by placing a true copy thereof in a sealed envelope addressed as follows:

SEE ATTACHED SERVICE LIST

By Mail I caused such envelope(s) to be deposited in the mail at El Segundo, California. The envelope was mailed with postage thereon fully prepaid and addressed to the parties listed on the Service List. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

XX **By Email** Based upon a court order or an agreement of the parties to accept electronic service, I caused the documents to be sent to the persons at the electronic service addresses listed in the Service List. My email address is mnixon@kmslegal.com.

By Personal Service I caused such document to be Personally Served on the parties listed in the Service List.

XX **State** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 12, 2023, at El Segundo, California.



Maria Nixon

SERVICE LIST

Assiff, Joshua vs. County of Los Angeles, et al.

Central District- Case No.: 2:22-cv-05367 RGK(MAAX)

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